

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION
TALLAHASSEE, FLORIDA

_____)	CONSENT ORDER
In the Matter of)	
FIRSTCITY BANK OF COMMERCE)	FDIC-18-0154b
PALM BEACH GARDENS, FLORIDA)	OFR 92551-FI
(Insured State Nonmember Bank))	
_____)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for FirstCity Bank of Commerce, Palm Beach Gardens, Florida, (“Bank”) under section 3(q) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1813(q).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER” (“STIPULATION”), dated October 9, 2018, that is accepted by the FDIC and the Florida Office of Financial Regulation (“OFR”) (collectively, “Supervisory Authorities”). With the STIPULATION, the Bank has consented to the issuance of this Consent Order (“ORDER”) by the Supervisory Authorities, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation relating to weaknesses in the Bank’s compliance with the Bank Secrecy Act, subchapter II of Chapter 53 of Title 31 of the United States Code, and its implementing rules issued by the U.S. Department of Treasury, 31 C.F.R. Chapter X; the FDIC’s Bank Secrecy Act compliance regulations, 12 C.F.R. § 326.8; the FDIC’s

suspicious activity report (“SAR”) regulations, 12 C.F.R. Part 353 (“Part 353”); and 12 U.S.C. § 1818(s); and section 655.50, Florida Statutes (2018) (collectively, the “BSA”).

Having determined that the requirements for issuance of an order under section 8(b) of the Act, 12 U.S.C. § 1818(b), and under Chapter 120 and Sections 655.033 and 655.041, Florida Statutes (2018), have been satisfied, the Supervisory Authorities hereby order that:

BOARD OF DIRECTORS

1. (a) As of the effective date of this ORDER, the Board shall assume full responsibility for the approval of sound policies and objectives and for the supervision of all Bank activities, consistent with the role and expertise commonly expected for directors of banks of comparable size. The Board’s participation shall include meetings to be held no less frequently than monthly. The following areas shall be reviewed and approved at each monthly meeting: BSA risk assessments; BSA staffing; BSA training; BSA independent testing; BSA compliance; Office of Foreign Asset Control (“OFAC”) compliance; Suspicious Activity Reports (“SARs”); BSA internal control reviews, including management’s responses; high-risk deposit accounts; BSA risk rating procedures; reports of the number of accounts per risk rating; and compliance with this ORDER. The Board minutes shall thoroughly document the Board’s reviews and approvals, the names of any dissenting Directors, and detailed discussions concerning all matters related to the Bank’s affairs and potential actions to address audit and regulatory concerns.

(b) The Board shall maintain a Board committee (“Directors’ Committee”), consisting of at least five members, to oversee the Bank’s compliance with this ORDER. At least three of the members of such committee shall be directors not employed by the Bank in any capacity other than as a director. The Directors’ Committee shall formulate and review monthly reports detailing the Bank’s actions with respect to compliance with this ORDER. The

Directors' Committee shall present a report to the Board at each regularly scheduled Board meeting, and such report shall detail the Bank's adherence to this ORDER. Such report shall be recorded in appropriate Board meeting minutes and shall be retained in the Bank's records. Establishment of this committee does not in any way diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

MANAGEMENT

2. (a) As of the effective date of this ORDER, the Bank shall have and retain qualified management with the qualifications and experience commensurate with assigned duties and responsibilities at the Bank. Each member of management shall be provided appropriate written authority from the Board to implement the provisions of this ORDER. At a minimum, management shall include the following:

(i) A chief executive officer with proven ability in managing a bank of comparable size and in effectively implementing lending, investment, and operating policies in accordance with safe and sound banking practices;

(ii) A senior lending officer with a significant amount of appropriate lending, collection, and loan supervision experience; and

(iii) A chief financial officer with a significant amount of appropriate experience in managing the operations of a bank of similar size and complexity in accordance with safe and sound banking practices.

(b) The qualifications of management shall be assessed on its ability to:

(i) Comply with the requirements of this ORDER;

(ii) Operate the Bank in a safe and sound manner;

(iii) Comply with applicable laws and regulations; and

(iv) Restore all aspects of the Bank to a safe and sound condition, including, but not limited to compliance with the BSA.

(c) During the life of this ORDER, the Bank shall notify the Supervisory Authorities, in writing and within 10 business days, of the resignation or termination of any of the Bank's directors or senior executive officers and provide the reason for the resignation or termination of the individual. Prior to the addition of any individual to the Board or the employment of any individual as a senior executive officer as defined in 12 C.F.R. §§ 303.101(f) or executive officer as defined in Section 655.005, Florida Statutes, the Bank shall comply with the requirements of section 32 of the Act, 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. §§ 303.100-303.104 and Section 655.0385, Florida Statutes, and Rule 69U-100.03852, Florida Administrative Code. The notification shall include a description of the background and experience of the individual or individuals to be added or employed and must be received at least 60 days before such addition or employment is intended to become effective. If the Regional Director of the FDIC or the OFR issues a notice of disapproval pursuant to section 32 of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1831i, or Section 655.0385(s), Florida Statutes, with respect to the proposed individual, then such individual may not be added to the Board or employed by the Bank.

BSA COMPLIANCE PROGRAM

3. Within 60 days from the effective date of this ORDER, the Bank shall revise and adopt a written BSA Compliance Program, including policies and procedures, which fully meets all requirements of 12 C.F.R. § 326.8, addresses the deficiencies and recommendations contained in the Report of Examination dated July 2, 2018 (“Report”), and which is designed to ensure and maintain full compliance with the BSA. The BSA Compliance Program shall be tailored to address the risk profile of the Bank identified in the Bank’s BSA risk assessment required by

paragraph 4 of this ORDER. The BSA Compliance Program will also ensure and maintain full compliance with all anti-money laundering (“AML”) laws, regulations, and rules and those relating to the OFAC. The Bank shall submit the BSA Compliance Program to the Supervisory Authorities for non-objection or comments. Within 30 days of receipt of the Supervisory Authorities’ non-objection or comments and after incorporation and adoption of all comments, the Board shall approve the BSA Compliance Program, which approval shall be recorded in the Board meeting minutes. Within 30 days of such Board approval, the Bank shall implement and fully comply with the BSA Compliance Program in a manner acceptable to the Supervisory Authorities as determined at subsequent examinations or visitations of the Bank.

RISK ASSESSMENT

4. Within 30 days from the effective date of the ORDER, the Board shall review and revise as appropriate its written policies, procedures, and processes for a risk assessment of the Bank’s operations (“Risk Assessment”). The Risk Assessment shall weigh all relevant factors, including identification and measurement of the specific risk characteristics of the Bank’s products, services, customers, affiliates, noncustomers, and geographic locations, with analysis of the major risk categories, including wire transactions and high-risk deposit accounts. The Risk Assessment shall address all pertinent risk factors that affect the overall BSA/AML risk profile of the Bank, including the deficiencies and recommendations contained in the Report, and ensure that risk ratings are accurate and well supported by qualitative and quantitative data. The Board shall review and approve the Risk Assessment and forward it to the Supervisory Authorities. Thereafter, the Bank shall conduct a Risk Assessment no less than annually. The Risk Assessment and its implementation shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

BSA INTERNAL CONTROLS

5. (a) Based on the results of the Risk Assessment, within 90 days from the effective date of this ORDER, the Bank shall revise the system of internal controls designed to ensure full compliance with the BSA (“BSA Internal Controls”) taking into account the size and risk profile of the Bank and addressing the deficiencies and recommendations contained in the Report.

(b) At a minimum, the BSA Internal Controls shall include policies, procedures, and processes addressing the following areas:

(i) Suspicious Activity Monitoring and Reporting: Taking into account the size and risk profile of the Bank, the Bank shall develop, adopt, and implement policies, procedures, processes, and systems, including, if applicable, automated software monitoring systems, for monitoring, detecting, and reporting suspicious activity being conducted in all areas within or through the Bank. To the extent that the Bank uses automated software monitoring, the Bank shall ensure that the program for the automated software addresses the specific risk profile of Bank customers and provides reports of suspicious activities targeted to the specific characteristics of the Bank’s customers. The Bank shall monitor all areas of the Bank for suspicious activity, including, but not limited to: cash transactions, international and domestic wire transfers, automated clearing house (“ACH”), foreign nationals, remote deposit capture, high-risk deposit accounts, and non-bank financial institution accounts. The Bank shall cause the timely, accurate, and complete filing of SARs. The Bank shall require the appropriate level of documentation and support for any decision to file or not to file a SAR, as required by law.

(ii) Customer Due Diligence: The Bank shall augment customer due diligence (“CDD”) policies, procedures, and processes for new and existing customers (“CDD Program”):

(A) the CDD Program shall address the deficiencies and recommendations contained in the Report;

(B) the CDD Program shall operate in conjunction with the Bank's Customer Identification Program ("CIP"); and

(C) At a minimum, the CDD Program shall include:

(1) a risk rating system to assess the Bank's customer base to ensure that the risk level of each customer is accurately identified based on the potential for money laundering or other illicit activity posed by the customer's activities. Each risk rating assessment shall take into account the purpose of the account, the anticipated type and volume of account activity, including the volume and frequency of wire and cash activity in the account, the types of products and services offered, all parties involved with the customer, including beneficial owners, as defined in 31 C.F.R. § 1010.230(d), authorized signors, and locations and markets served by the customer;

(2) policies and procedures with respect to high-risk accounts and customers, including a formal visitation program for all high-risk customers, periodic update of risk grades based on changes in risk factors, and a process for obtaining higher-level approvals for accounts and transactions where appropriate;

(3) an appropriate level of ongoing monitoring commensurate with the customer's risk level to ensure that the Bank can reasonably detect suspicious activity and accurately determine whether the customer or customer activities require enhanced due diligence ("EDD");

(4) a sufficient level of customer information at account opening and appropriate analysis of that information to assist and support the risk rating assigned, including assigning specific threshold and limits for processing cash, checks, wire transfers, and other items;

(5) procedures for documenting and supporting the risk analysis conducted under the CDD process, including procedures for validating risk ratings assigned at account opening and resolving issues in the event insufficient or inaccurate information is obtained; and

(6) procedures to reasonably ensure the timely identification and accurate reporting of known or suspected criminal activity, as required by Part 353.

(iii) Enhanced Due Diligence: As part of CDD, the Bank shall establish policies, procedures, and processes to conduct EDD necessary for those customer relationships that the Bank has reason to believe pose a heightened risk of suspicious activity, including, but not limited to, high-risk accounts:

(A) EDD, as part of CDD procedures, shall address the deficiencies and recommendations contained in the Report;

(B) EDD shall operate in conjunction with the Bank's CIP and CDD policies, procedures and processes; and

(C) At a minimum, EDD, as part of CDD procedures, shall include:

(1) procedures to determine the frequency of ongoing reviews based on customer risk level;

(2) procedures to determine the appropriate documentation necessary to conduct and support ongoing reviews and analyses in order to reasonably understand the customer's normal and expected transactions; and

(3) procedures to reasonably ensure the timely identification and accurate reporting to law enforcement and the Supervisory Authorities of known or suspected criminal activity against or involving the Bank, as required by Part 353.

(iv) The policies, procedures, and processes that comprise the Bank's BSA Internal Controls shall operate in conjunction with each other and shall address the deficiencies and recommendations contained in the Report, including dissemination of the high-risk customer list to appropriate departments within the Bank.

(v) Required Reporting: The Bank's BSA Internal Controls shall provide for periodic reports that address the following areas of activity: high-volume wire transfer accounts, activity by risk code, and transactions by country. The reports shall also include tracking data to ensure appropriate CIP information is obtained, site visitations are conducted, and monitoring and SAR reporting systems procedures are being implemented in a timely manner. Such reports shall be provided to the Board prior to each Board meeting.

(c) The BSA Internal Controls shall be submitted to the Supervisory Authorities for comments. Within 30 days of receipt of the Supervisory Authorities' comments and after incorporation and adoption of all comments, the Board shall approve the BSA Internal Controls, which approval shall be recorded in the Board meeting minutes. Thereafter, the Bank shall implement and fully comply with the BSA Internal Controls.

BSA TRAINING

6. (a) The Bank shall ensure that all appropriate personnel are aware of, and can comply with, the requirements of the BSA applicable to the individual's specific responsibilities to assure the Bank's compliance with the BSA.

(b) Within 60 days from the effective date of this ORDER, the Bank shall revise, adopt, and implement effective training programs designed for the Board, management, and staff and their specific compliance responsibilities on all relevant aspects of laws, regulations, and Bank policies, procedures and processes relating to the BSA Rules ("BSA Training Program"). The BSA Training Program shall ensure that all appropriate personnel are aware of, and can

comply with, the requirements of the BSA on an ongoing basis, including as they relate to high-risk accounts, products, and services. The BSA Training Program shall, at a minimum, include:

- (i) An overview of the BSA Rules for new staff along with specific training designed for their specific duties and responsibilities upon hiring;
- (ii) Training on the Bank's BSA, AML, and OFAC policies, procedures and processes along with new rules and requirements as they arise for appropriate personnel designed to address their specific duties and responsibilities;
- (iii) A requirement that the Bank fully document the training of each employee with respect to the BSA Compliance Program, automated software, BSA, AML, and OFAC policies, procedures, and processes; and
- (iv) A requirement that training be conducted no less frequently than annually.

BSA OFFICER, STAFF, AND RESOURCES

7. (a) Within 60 days from the effective date of this ORDER, the Bank shall develop a written analysis and assessment of the Bank's BSA staffing needs ("BSA Staff Plan") for the purpose of ensuring the Bank employs BSA staff with the requisite ability, experience, and other qualifications necessary to ensure BSA compliance. The BSA Staff Plan shall include, at a minimum:

- (i) Identification of both the type and number of officer and staff positions needed to properly implement, manage, and supervise the Bank's BSA Compliance Program;
- (ii) Consideration of the Bank's size and growth plans, geographical areas served, products and services offered, and changes in the BSA/AML and OFAC practices, procedures, rules, and regulation.
- (iii) Written evaluation of the BSA Officer, to determine whether this individual possesses the ability, experience and other qualifications required to perform present

and anticipated duties, including, but not limited to, adherence to the Bank's BSA Compliance Program;

(iv) A plan to recruit and hire any additional or replacement personnel with the requisite ability, experience, and other qualifications to fill those officer or staff member positions consistent with the needs identified in the BSA Staff Plan; and

(v) An organizational chart.

(b) The Board shall review and approve the BSA Staff Plan. Periodically thereafter, but no less often than annually, the Bank shall assess its BSA staffing needs to ensure adequate and appropriate BSA staffing resources are in place at all times. Such BSA Staff Plan and its implementation shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(c) Within 60 days from the effective date of this ORDER, the Board shall designate a qualified individual or individuals ("BSA Officer"), acceptable to the Supervisory Authorities, with delegated authority and adequate and appropriate resources to implement the Bank's BSA Compliance Program. The BSA Officer's qualifications shall be commensurate with the complexity of the Bank's activities and the selection of the BSA Officer shall address the deficiencies and recommendations contained in the Report. The BSA Officer shall report directly to the Board and shall provide reports as required directly to the Board or to the Directors' Committee established by the Board pursuant to paragraph 1(b) of this ORDER.

LOOK BACK REVIEW

8. (a) Within 30 days from the effective date of this ORDER, the Bank shall engage an independent qualified firm, acceptable to the Supervisory Authorities, to conduct a review of all high-risk accounts and high-risk transaction activity for the time period beginning August 21, 2017 through the effective date of this ORDER to determine whether suspicious activity was

properly identified and reported in accordance with the applicable suspicious activity reporting requirements (“Look Back Review”).

(b) Within 60 days from the effective date of this ORDER, the Bank shall submit to the Supervisory Authorities for non-objection a written plan to conduct the Look Back Review (“Look Back Review Plan”) that sets forth:

(i) The scope of the Look Back Review, including the types of transactions to be reviewed;

(ii) The methodology for conducting the Look Back Review, including any sampling procedures to be followed;

(iii) The expertise and resources devoted to the Look Back Review;

(iv) The anticipated completion date of the Look Back Review; and

(v) A commitment that any interim reports, draft reports or work papers associated with the Look Back Review will be made available to the Supervisory Authorities upon request.

(c) Within 120 days of receipt of the Supervisory Authorities’ non-objection to the Look Back Review Plan, the Look Back Review shall be completed and submitted to the Board. The review firm shall present its findings from the Look Back Review directly to the Board at a Board meeting and the presentation, conclusions, and discussion of the findings shall be reflected in the Board meeting minutes.

(d) Upon completion of the Look Back Review, the Bank shall prepare and file any Currency Transaction Reports (“CTRs”) and SARs necessary based on the Look Back Review. In addition, the Bank shall submit a copy of the Look Back Review and copies of any additional CTRs and SARs filed to the Supervisory Authorities.

INDEPENDENT TESTING

9. (a) Within 60 days from the effective date of the ORDER, the Bank shall develop and adopt, and the Board shall approve, a plan to conduct testing for compliance with the BSA Rules, the BSA Compliance Program, and OFAC rules and regulations. The scope and depth of the independent testing must be commensurate to the size and complexity of the Bank's operations. Written testing reports shall contain sufficient documentation and descriptions of the testing procedures performed, the resulting conclusions regarding the effectiveness of the program in ensuring ongoing compliance with all BSA Rules, and recommendations for improvements. The Bank shall confirm that its staff has appropriate knowledge, skills, and resources to ensure that the responsibilities of the independent testing function are conducted appropriately and to develop plans to address any identified gaps. The testing should include an evaluation and validation of the effectiveness of the suspicious activity monitoring systems (manual or automated) used for BSA/AML compliance. The results of each independent test as well as any apparent exceptions noted during the testing shall be presented to the Board. The Board shall record the steps taken to correct any exceptions noted and address any recommendations made during each independent test in the Board meeting minutes. Thereafter, the Bank shall have independent testing performed no less than annually.

(b) Within 90 days from the effective date of this ORDER, the Bank shall revise its internal audit program to establish procedures to review the integrity of Bank's compliance with the BSA Compliance Program and the BSA Rules, with significant exceptions reported directly to the Board. The internal audit program shall provide for quality assurance and shall be adequately staffed commensurate with the size and complexity of the Bank. The Bank shall develop appropriate procedures for the engagement, scoping, and work product of any contractor

engaged to assist with the internal audit program. Such program and its implementation shall, at a minimum, eliminate and/or correct all independent testing deficiencies identified in the Report.

BSA REPORTS

10. The Bank shall ensure that all required reports including CTRs, SARs, Reports of International Transportation of Currency or Monetary Instruments, Reports of Foreign Bank and Financial Accounts, and any other similar or related reports required by law or regulation are completed accurately and properly filed within required timeframes.

VIOLATIONS OF LAW AND REGULATION

11. Within 60 days from the effective date of this ORDER, the Bank will eliminate and/or correct all violations of laws and regulations noted in the Report and shall adopt and implement appropriate procedures to ensure future compliance with all such applicable federal and state laws, regulations, and/or statements of policy.

PROGRESS REPORTS

12. Within 45 days from the end of the first quarter following the effective date of this ORDER, and within 45 days from the end of each quarter thereafter, the Bank shall furnish written progress reports to the Supervisory Authorities detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Supervisory Authorities have released the Bank in writing from making further reports. All progress reports and other written responses to this ORDER shall be reviewed by the Board and made a part of the appropriate Board meeting minutes.

SHAREHOLDER DISCLOSURE

13. Within 30 days from the effective date of this ORDER, the Bank shall provide to its shareholders or otherwise furnish a description of this ORDER, in conjunction with the Bank's

next shareholder communication and in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Division of Supervision, Accounting and Securities Disclosure Section, 550 17th Street, N.W., Room F-6066, Washington, D.C. 20429 and the OFR, Division of Financial Institutions, 200 E. Gaines Street, Tallahassee, FL 32399-0310 for non-objection or comment at least 20 days prior to dissemination to shareholders. Any changes requested by the FDIC or the OFR shall be made prior to dissemination of the description, communication, notice, or statement.

This ORDER shall not bar, stop, or otherwise prevent the FDIC, the OFR, or any other federal or state agency or department from taking any action against the Bank, the Bank's current or former institution-affiliated parties, and/or any of their respective directors, officers, employees, and agents, including, but not limited to, the imposition of civil money penalties.

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

The provisions of this ORDER shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside

by the Supervisory Authorities.

This ORDER shall be effective on the date of issuance.

Issued Pursuant to Delegated Authority

Dated this 10th of Oct., 2018.


By:

/s/

Michael J. Dean
Regional Director
Division of Risk Management Supervision
Atlanta Region
Federal Deposit Insurance Corporation

The Commissioner of the OFR having duly approved the foregoing ORDER, and the Bank, through its Board, agree that the issuance of said ORDER by the FDIC shall be binding as between the Bank and the OFR to the same degree and to the same legal effect that such ORDER would be binding if the OFR had issued a separate ORDER that included and incorporated all of the provisions of the foregoing ORDER, pursuant to Chapters 120, 655, and 658, including specifically Sections 655.033 and 655.041, Florida Statutes (2018).

Dated this 9th of October, 2018.

Jeremy W. Smith by 
Jeremy W. Smith
Director
Division of Financial Institutions
By Delegated Authority for the Commissioner,
Florida Office of Financial Regulation
David E. Butler
Area Financial Manager, OFR